

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**COURTS AND COUNTIES ARE NOT
COLLECTING AND REMITTING TO THE STATE
ALL REVENUE FOR THE VICTIMS OF
CRIME PROGRAM**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

P-337

COURTS AND COUNTIES ARE NOT COLLECTING
AND REMITTING TO THE STATE ALL REVENUE
FOR THE VICTIMS OF CRIME PROGRAM

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Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the courts' and counties' failure to collect and remit all revenue for the Victims of Crime Program. We found that the system for collecting and remitting fines and assessments that support the program needs improvement.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

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SUMMARY

The system for collecting and remitting fines and assessments that supports the Victims of Crime Program (victims program) needs improvement. California courts and probation departments in four counties we reviewed have not collected the proper amounts of fines and assessments and counties have not remitted the proper amount of revenue to the State. The net effect of the inaccurate collections and remittances by the counties during the period July 1981 through June 1983 was an underpayment to the State of more than \$1.5 million. In addition, over \$1.4 million in assessments collected by the State's Traffic Adjudication Board has not been transferred to the correct state fund for support of the victims program. These weaknesses occurred because of inadequate collection procedures, inadequate monitoring by county auditors, and lack of clear authority for the State Controller to monitor county collections. However, effective January 1, 1984, the Legislature authorized the State Controller to transfer the money collected by the Traffic Adjudication Board, but as of March 14, 1984, the transfer still had not been made. Moreover, fines and assessments have not been sufficient to fully fund the victims program.

Inaccurate Collections and Remittances

Support for the victims program, which compensates California residents who are injured and suffer financial hardship as the result of a violent crime, is derived from fines collected from persons convicted of driving under the influence of drugs or alcohol, or crimes of violence, and from assessments collected from persons convicted of these and all other criminal offenses. Assessments are financial penalties levied in addition to fines. Courts, probation departments, county clerks, and county collection departments collect the fines and assessments and report the amount to the county auditors who remit the revenue to the State. The Traffic Adjudication Board also collects

assessments for the State. These courts and county agencies, however, have not collected and remitted correct payments to the State, and assessments collected by the Traffic Adjudication Board have not been transferred to the state fund that provides support for the victims program.

Three of the four counties we visited underpaid the State in assessments during calendar year 1982. Because Los Angeles County did not correctly separate state and county assessments before remitting revenue to the State, the county underpaid the State by approximately \$1.7 million from January 1982 through December 1982. Alameda County and Santa Clara County similarly underpaid assessments due the State in 1982 by approximately \$63,900. Conversely, from January 1982 through June 1983, Riverside County reportedly overpaid the assessment by approximately \$131,400.

Inaccurate collection and remittance of fines and assessments occurred because courts and county officials have not complied with existing statutes and have not promptly established procedures required to implement new laws. For example, the county clerk in Los Angeles County reported fines and assessments to the county auditor quarterly instead of monthly as the law requires. Consequently, the county auditor remitted these fines and assessments to the State quarterly, allowing Los Angeles County to use state funds for up to three months before sending them to the State. On the other hand, a county collection department in Alameda County and one court in Santa Clara County did not increase the assessment rate for more than five months after a higher rate became effective in 1981. As a result, the two agencies failed to collect \$65,400 in additional assessments. County personnel said they had not been informed of the change in rate.

We also found that some counties were not remitting to the State proper amounts of fines levied on defendants convicted of driving under the influence (DUI) of alcohol or drugs. State law requires courts to report to the county auditor the first \$20 of moneys collected for DUI

convictions. This amount is to be remitted to the State in addition to the assessment collected on the total DUI fine. The county auditor is to remit this revenue to the State. However, some courts in Los Angeles County and Riverside County did not begin reporting DUI revenue until four to nine months after the state law became effective. We estimate that the courts in the two counties underreported DUI revenue by a total of \$32,100 during 1982. Conversely, two municipal courts in Los Angeles County overreported DUI fines by \$235,900, and Alameda County overpaid DUI fines to the State by \$27,800 from January 1982 through June 1983.

In addition to counties, the Traffic Adjudication Board (TAB) which processes traffic infractions for Sacramento County and Yolo County also collects fines and assessments. Each month the TAB reports to the State Controller the fines and assessments that it collects for disbursement to the Sacramento and Yolo county auditors and the State's Assessment Fund. Because, prior to January 1, 1984, no statute authorized the State Controller to transfer assessments collected by the TAB to the Assessment Fund, over \$1.4 million in assessments collected by the TAB have not been transferred.

Although we examined collection procedures in only four counties, the problems we identified may exist throughout the State. A 1983 study of courts and county agencies in six counties conducted by the Office of Criminal Justice Planning found similar problems in those counties.

Inadequate Procedures and Monitoring

County auditors have not adequately reviewed court procedures to insure that revenue collected is properly accounted for by the courts. The oversight procedures of county auditors have not been adequate to insure that courts collect and report the proper amount of revenue to county auditors.

The State Controller has not provided counties timely notice of new collection requirements and has not adequately monitored the counties to ensure that biennial audits of municipal and justice courts are completed promptly and that the scope of the audits insure that the courts are levying, collecting, and reporting the proper amount of revenue. Furthermore, legislation that established the victims program does not clearly define the authority and responsibility of the State Controller to monitor and oversee the revenue collections. As a result, the State Controller has not ensured that counties collect and remit the proper amount of fines and assessments or that county auditors provide adequate monitoring.

Inadequate Funding

Although the Legislature has changed legislation to increase financial support for the victims program, the changes did not produce enough revenue to fully fund the program. For example, in the three fiscal years 1980-81, 1981-82, and 1982-83, revenue for the victims program was not sufficient to pay all claims.

This deficiency in revenue resulted from several factors in addition to county underpayments of fines and assessments. First, revenue produced by DUI fines has not been significant. Although current statutes require counties to remit to the State the first \$20 of DUI moneys collected, not all DUI convictions result in fines, either because the courts do not levy a fine or because defendants do not pay the fine. Our review of a sample of 156 DUI cases processed from January 1982 through September 1983 found that of the 127 defendants who were convicted, 115 were fined. However, only 57 defendants who were fined actually paid any portion of the fine.

Second, state revenue from DUI fines has also been reduced by an apparent conflict between Sections 1203.1 and 1463.18 of the California Penal Code. Because of the conflict, county probation

departments may be exempt from remitting to the State DUI fines that they collect. Similarly, because Section 1463 of the Penal Code does not apply to DUI fines collected by juvenile courts, counties may not be required to remit to the State revenue from DUI fines paid by juveniles.

Finally, fines levied on defendants convicted of violent crimes have also not produced significant revenue for the State. Judges told us that they have been reluctant to impose these fines because many defendants are unable to pay such fines, because imposing the fines requires additional hearings in already overcrowded court calendars, and, in many cases, because society is better served by sentencing defendants to jail or prison rather than imposing a fine.

Recommendations

To correct weaknesses in the system for collecting and remitting revenue for the Victims of Crime Program, the Legislature should authorize the State Controller to monitor the collection activities of all courts, probation departments, county collection departments, and county auditors that collect revenues to support the program. The Legislature should also resolve the apparent contradiction in sections of the Penal Code that pertain to DUI fines.

In addition, the State Controller should direct the courts to establish procedures for accurately calculating assessments, provide the courts with timely, accurate updates to reflect changes in the statutes, and monitor the counties to ensure that biennial court audits are completed promptly and that the scope of these audits ensure that the courts are properly levying, collecting, and reporting fines and assessments due the State.

INTRODUCTION

In 1967, the Legislature established the Victims of Crime Program (victims program) to provide financial assistance to California residents who are injured and suffer financial hardship as the direct result of a violent crime. The program covers only those crimes that result in personal injury or death to the victim.

A victim of a violent crime, any person dependent upon the victim for support, and certain nondependent persons may file an application for compensation with the State Board of Control (board), which is responsible for processing the applications. The board staff verifies information on the application and determines if the applicant is eligible for compensation. The board either denies the application or approves the application and determines the amount to be awarded. The maximum award allowable under the program is \$23,500.

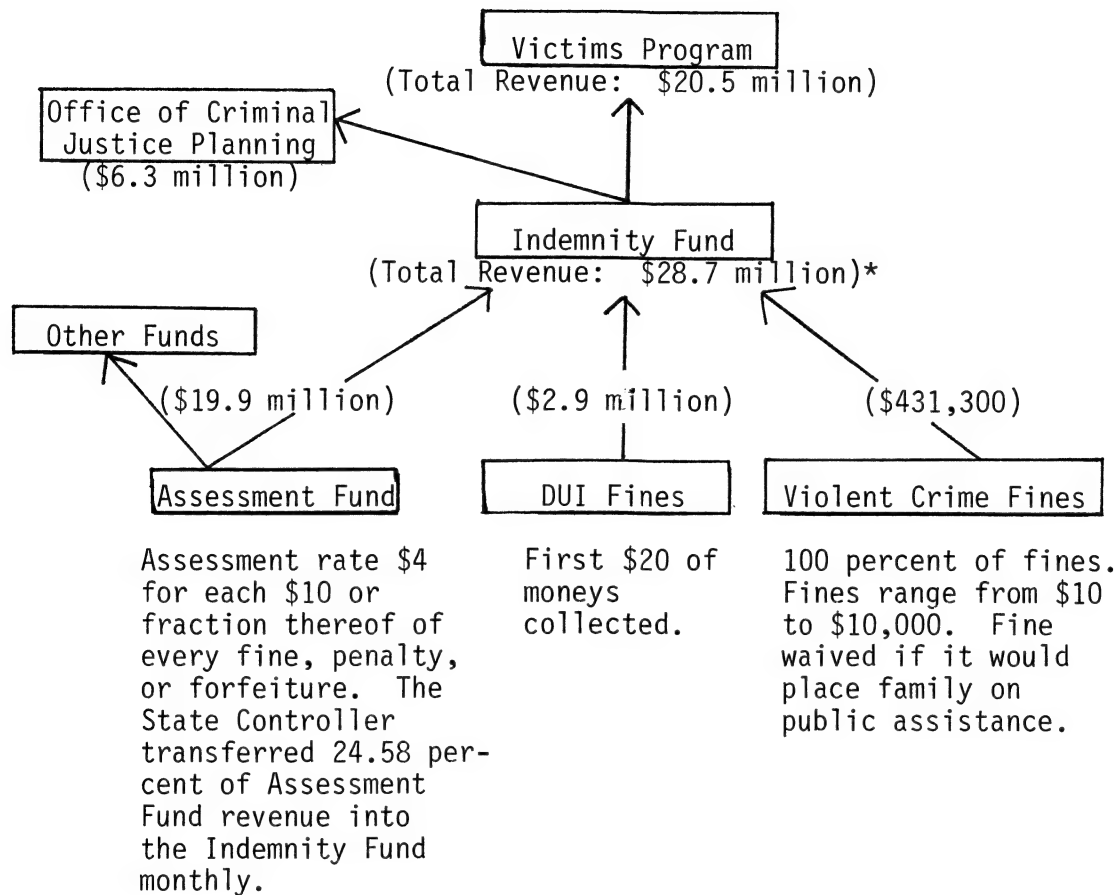
Since July 1, 1980, the program's expenditures have rapidly increased. Expenditures in fiscal year 1980-81 were \$8.9 million; they rose to \$20.5 million in fiscal year 1982-83. Several factors account for this rapid growth. First, the board increased its effort to process a backlog of applications from prior years. Second, the percentage of new applications and supplemental awards approved by the board increased from 54 percent in fiscal year 1980-81 to 63 percent in fiscal year 1982-83. Finally, based on the board's annual reports, the average award increased from approximately \$2,109 in fiscal year 1980-81 to \$2,239 in fiscal year 1982-83.

Funding the Victims Program

Money for the victims program has come from two state sources, the General Fund and the Indemnity Fund (called the Restitution Fund after January 1, 1984). Revenue for the victims program in fiscal year 1982-83 was approximately \$20.5 million, all of which came from the Indemnity Fund. Approximately 71 percent of Indemnity Fund revenue was transferred to the victims program during that year. The Indemnity Fund also funded several programs administered by the Office of Criminal Justice Planning.

Indemnity Fund revenue comes primarily from three sources: 1) the State's Assessment Fund; 2) fines of persons convicted of driving under the influence (DUI) of alcohol or drugs; and 3) fines of persons convicted of violent crimes. Table 1 on the following page shows the funding for the victims program from these three sources for fiscal year 1982-83.

TABLE 1
FUNDING FOR THE VICTIMS PROGRAM
FISCAL YEAR 1982-83



*Also includes \$5.2 million transferred from the assessment fund that was due to the Peace Officers' Training Fund and approximately \$300,000 derived from miscellaneous reimbursements. Four million dollars of the \$5.2 million was to be used for the victims program and \$1.2 million for the OCJP. Approximately \$1.9 million was carried over to fiscal year 1983-84.

Assessment Fund

As Table 1 shows, the State's Assessment Fund provides most of the money for the Indemnity Fund. The Assessment Fund, which was created

when the Legislature enacted Section 1464 of the California Penal Code (effective January 1, 1981), is composed of "assessments" that courts collect for criminal offenses.* An assessment is an additional amount that courts must levy on each fine, penalty, and forfeiture for criminal offenses, including violations of the Vehicle Code. A forfeiture is money paid by a person who commits a violation that does not require a court appearance.

Section 1464 of the Penal Code requires courts to levy and collect an assessment on every fine, penalty, or forfeiture imposed and collected by the court. The courts must calculate the assessment based on the total amount of the fine and report the assessment monthly to the county auditor who remits the money to the State for deposit into the Assessment Fund.

The Legislature has increased the assessment rate several times since creating the Assessment Fund. From January 1981 through June 1981, the assessment rate was \$3 for every \$10 or fraction thereof of every fine, penalty, or forfeiture. On June 28, 1981, the assessment rate increased to \$4 for every \$10 or fraction thereof. Under the \$4 rate, for example, a judge who fined an offender \$100 was required to assess an additional \$40 for a total due of \$140.

*The State's Traffic Adjudication Board (TAB) also collects assessments for the Assessment Fund. We discuss the TAB assessments later in this report.

Each month, counties must remit the assessments to the State for deposit in the Assessment Fund. Prior to January 1, 1984, the State Controller transferred to the Indemnity Fund 24.58 percent of the revenue deposited in the Assessment Fund; the remaining 75.42 percent of Assessment Fund revenue was transferred to other state funds. In fiscal year 1982-83, the State Controller transferred approximately \$25.1 million of Assessment Fund revenue to the Indemnity Fund. This amount includes \$5.2 million of Assessment Fund revenue originally due to the Peace Officers' Training Fund. Revenue transferred from the Assessment Fund constituted approximately 88 percent of the money deposited in the Indemnity Fund for that fiscal year.

Fines for DUI

A portion of each fine paid by persons convicted of violating Sections 23152 or 23153 of the California Vehicle Code, driving under the influence of alcohol or drugs, is a second source of funding for the Indemnity Fund. Section 1463.18 of the California Penal Code, effective January 1982, requires counties to remit to the State the first \$20 of moneys collected for a DUI conviction. This amount of DUI fines is in addition to the assessment that courts collect for the State on the total DUI fine. The State Treasurer deposits in the Indemnity Fund DUI fine revenue received from the counties.

The minimum fine for a DUI conviction is \$390. However, whether or not the defendant pays the total fine, counties must remit to the State the first \$20 paid. In fiscal year 1982-83, the State received approximately \$2.9 million in DUI revenues for the Indemnity Fund.

Fines for Violent Crimes

Fines of persons convicted of crimes of violence constitute a third but relatively small source of revenue for the Indemnity Fund. Section 13967 of the California Government Code requires judges to order a person convicted of committing a violent crime resulting in injury or death to pay, in addition to any other fine or assessment, a fine commensurate with that crime. This fine is remitted to the State for deposit to the Indemnity Fund.

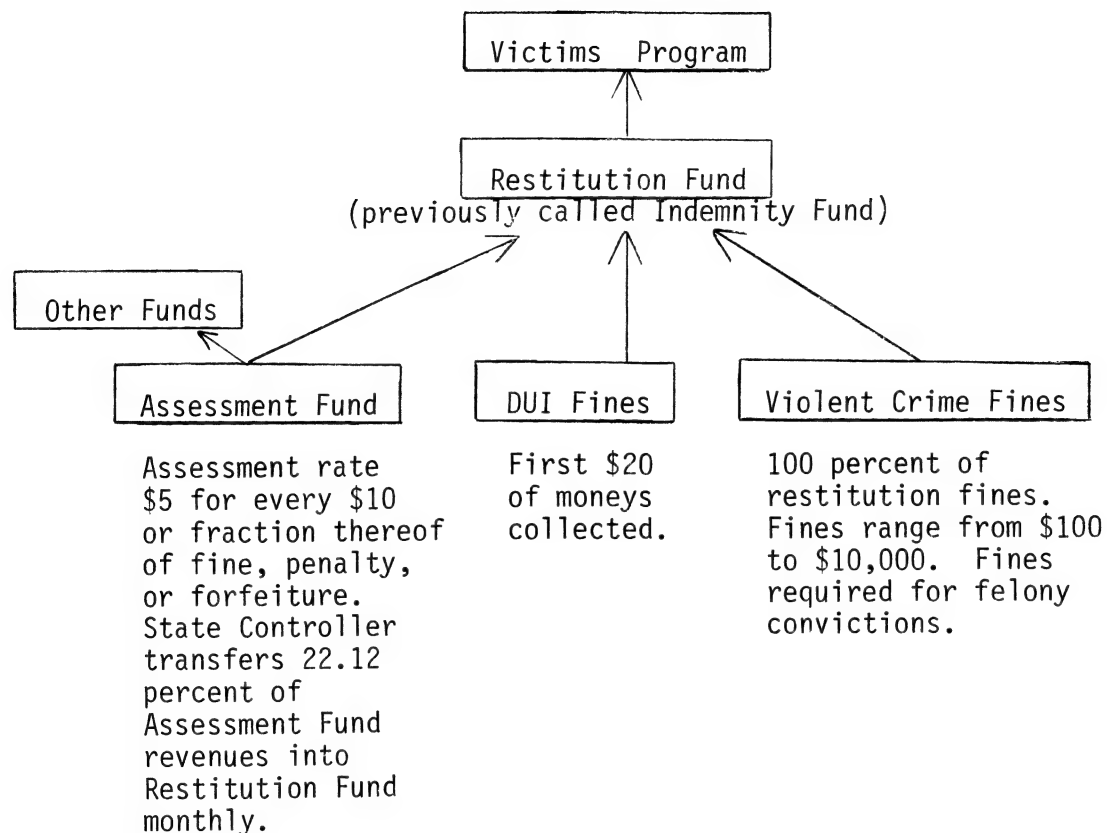
Prior to January 1, 1984, a judge could order a fine of at least \$10 but not over \$10,000. The fine, however, could only be imposed if it would not cause the defendant's family to be placed on public assistance. The State received approximately \$431,300 of these fines in fiscal year 1982-83.

Changes Made January 1, 1984

To increase the amount of money available to compensate victims, the Legislature enacted various laws referred to as the Crime Victim Restitution Program of 1983. Effective January 1, 1984, these

laws made the following changes in the victims program: changed the name of the Indemnity Fund to the "Restitution Fund"; required that 22.12 percent of the monthly Assessment Fund revenue be transferred to the Restitution Fund; increased the assessment levied on fines; increased the minimum fine for persons convicted of violent crime; and mandated a restitution fine in addition to any basic penalty for felony convictions. The legislation also restricted the Restitution Fund to funding compensation of victims and administration of the victims program. Restitution Fund revenue will not be used to support programs administered by the Office of Criminal Justice Planning. These changes are shown in Table 2 on the following page.

TABLE 2
FUNDING FOR THE VICTIMS PROGRAM
EFFECTIVE JANUARY 1, 1984



Responsibility for
Collecting Revenue

Courts, county clerks, county probation departments, county collection departments, county auditor-controllers (county auditors), and the State Controller share the responsibility for ensuring that revenue to support the victims program is properly collected and remitted to the State. Courts have the major responsibility for imposing and collecting fines and assessments. The majority of the fines and assessments

remitted to the State come from cases in the municipal and justice courts. The fines and assessments imposed in these courts are generally collected by the court clerks. In superior courts, which hear the more serious crimes, the county clerk collects the fines and assessments. Juvenile courts, under the jurisdiction of the superior courts, hear cases involving juveniles.

In addition, any court may place a defendant on probation and order that person to pay a fine and assessment to the county probation department. In these cases, the county probation department collects the fines and assessments. Finally, in some counties, defendants convicted of a crime and directed by the court to pay the fine and assessment in installments may make installment payments to a county collection department.

Each month the court or county department that collected the fines and assessments must transfer the money to the county treasury and report to the county auditor the amount collected. The county auditor then summarizes and remits the fines and assessments to the State for deposit in the Indemnity Fund and the Assessment Fund. In addition, the county auditors may review the cashiering and accounting procedures of courts and county departments within their jurisdiction.

In addition to these county agencies, one state board is also responsible for collecting revenue. In 1978, the Legislature established the Traffic Adjudication Board as a pilot project to handle traffic cases

in Sacramento and Yolo Counties. The Traffic Adjudication Board collects the fines and assessments it imposes and reports these fines and assessments to the State Controller for disbursement to the county auditors of the two counties and to the Assessment Fund.

The State Controller is responsible for accounting for revenue remitted to the State by the county auditors. Additionally, the State Controller has responsibility for providing a uniform accounting system and guidelines for auditing municipal and justice courts.

SCOPE AND METHODOLOGY

We reviewed the system for collecting and remitting fines and assessments that finances the Victims of Crime Program. Our review covered the period from July 1981 through June 1983. We focused our review on a sample of courts, probation departments, and county auditors in four counties to analyze their procedures for calculating, levying, collecting, and remitting fines and assessments. We also reviewed methods used by county auditors to monitor the money collected by the courts and probation departments. Finally, we reviewed the State Controller's procedures for accounting for revenue received from the county auditors and for overseeing and monitoring the collection activities of the courts, county clerks, probation departments, and county auditors.

To evaluate the accuracy of procedures used by the courts and probation departments for levying and collecting fines and assessments, we chose four counties for review: Alameda, Los Angeles, Riverside, and Santa Clara. In total, the four counties accounted for 45 percent of the total revenue remitted to the State for deposit in the Assessment Fund and Indemnity Fund during fiscal year 1982-83. Within those counties, we selected for detailed analysis a sample of superior, municipal, and juvenile courts, and county probation departments. Only Los Angeles County has a justice court; we did not review that court. The courts we audited within these counties collected 64.6 percent of the revenue that those counties remitted to the State.

We performed various tests in the courts and county agencies we reviewed; we did not perform all tests at each court or county agency. To estimate the amount of revenue that each county may have underpaid or overpaid to the State, we generally relied on samples of data obtained during our review of that county. In some instances, we relied on data developed in tests performed in counties other than the county for which the estimate was made. Our estimates of underpayments and overpayments are generally conservative. The amounts of underpayments are the minimum amounts that we estimate counties owe the State; the actual amounts are probably greater. Similarly, the estimates of county overpayments to the State are minimums; the actual amounts are probably greater.

In 14 municipal courts, 4 superior courts, 4 juvenile courts, and 3 probation departments in these counties, we interviewed key administrative and accounting personnel to determine the agency's procedures for collecting and accounting for its fines and assessments. We also interviewed the presiding judges at some courts to obtain their views of the victims program and the statutes enacted to fund the program. We also tested each court's and probation department's compliance with the statutes that require these agencies to collect fines and assessments and report the amounts to the county auditor. We also examined records to determine if the money collected by these agencies was properly identified and transferred to the county auditor.

We interviewed key personnel in the offices of the county auditors to determine their procedures for summarizing and remitting to the State revenue collected by courts and agencies in their counties. We examined records of the county auditors to determine if the collections in their counties were properly remitted to the State.

At the State Controller's office, we interviewed officials in the Division of Accounting to determine their procedures for accounting for the revenue remitted by the counties. We also interviewed officials in the State Controller's Local Government Fiscal Affairs Division and the Audits Division to identify the procedures used to ensure that the counties remit the proper amount of revenue, and procedures used to oversee and monitor the collection activities of the courts, county auditors, and probation departments. In addition, we reviewed monthly reports submitted by the county auditors to the State Controller.

We also examined records and interviewed staff in the Office of Criminal Justice Planning (OCJP). In 1983, the OCJP audited procedures for collecting revenue for the victims program in several counties. We include the results of the OCJP's review of Sacramento and San Diego Counties in this report.

AUDIT RESULTS

I

THE SYSTEM FOR COLLECTING AND REMITTING REVENUE NEEDS IMPROVEMENT

Courts and departments in the four California counties we reviewed are not collecting and promptly reporting to the State the correct amount of fines and assessments. Errors in calculating assessments and errors in reporting fines have resulted in a net underpayment of revenue due the State; this revenue supports the Victims of Crime Program (victims program). The Office of Criminal Justice Planning has found similar conditions in other California counties. The total net underpayment from these four counties from July 1981 to June 1983 was more than \$1.5 million. In addition, over \$1.4 million in assessments collected by the Traffic Adjudication Board since January 1981 has not been transferred to the State's Assessment Fund. Errors in collecting and remitting fines and assessments occurred because counties have not established adequate procedures to ensure that correct fines and assessments are collected and promptly remitted to the State. Further, legislation that established the victims program does not clearly define the authority and responsibility of county auditors and the State Controller for monitoring the revenue collections. Neither the county auditors nor the State Controller has provided sufficient monitoring and oversight of the collection activities of the courts. Finally, revenue collected by the Traffic Adjudication Board was not

transferred to the Assessment Fund because, until January 1984, no statute authorized the State Controller to make the transfer.

County Agencies Have Not Collected
the Correct Amount of Assessments

One collection department and one court in the counties we visited did not collect the correct amount of assessments from July 1981 through December 1982. These agencies should have collected an additional \$80,500 in assessments during that period.

From October 1982 through December 1982, the Alameda County central collections department incorrectly deducted from the fine, certain amounts due to other programs before calculating the assessment; as a result, the department collected smaller assessments than required by law. Section 1464 of the California Penal Code requires that assessments be calculated based on the total amount of the fine. Furthermore, the department did not increase the assessment rate from \$3 to \$4 of every \$10 of fine until January 1982, six months after the higher rate became effective.

As a result of these errors, we estimate that the department collected \$68,000 less than it should have collected during these two periods. The department's accounting supervisor said that the errors in calculating the assessment and the delay in changing the assessment rate occurred because his department, which is not a part of the court system, often does not receive adequate information from the county or from the State regarding interpretation of and changes in the statutes.

Similar to Alameda County, the Santa Clara County juvenile traffic court failed to increase the assessment rate on the date the increase became effective. The juvenile court did not increase the assessment rate until December 1981, five months after the effective date of the increase. As a result, the court failed to collect approximately \$12,500 in additional assessments. The staff we interviewed at the court stated that a probation department official did not notify them of the change in the assessment rate at the time the change became effective.

County Auditors and
Courts Have Not Remitted
Proper Amounts of Revenue

Some county auditors and courts have not properly identified assessments that should be remitted to the State and assessments that should be retained for the county's use. As a result, we estimate that three counties underpaid assessments due the State by more than \$1.8 million; another county reported that it overpaid assessments by approximately \$131,400.

Beginning January 1, 1982, the Legislature authorized courts in all counties to levy an assessment in addition to the State assessment on each \$10 of fine imposed. Los Angeles and San Francisco Counties were authorized to levy a \$2 assessment on each \$10 of fine. All other counties were authorized to levy one dollar. The counties' assessment, which was levied to pay for constructing county jails and court facilities, was levied in the same manner and for the same violations as

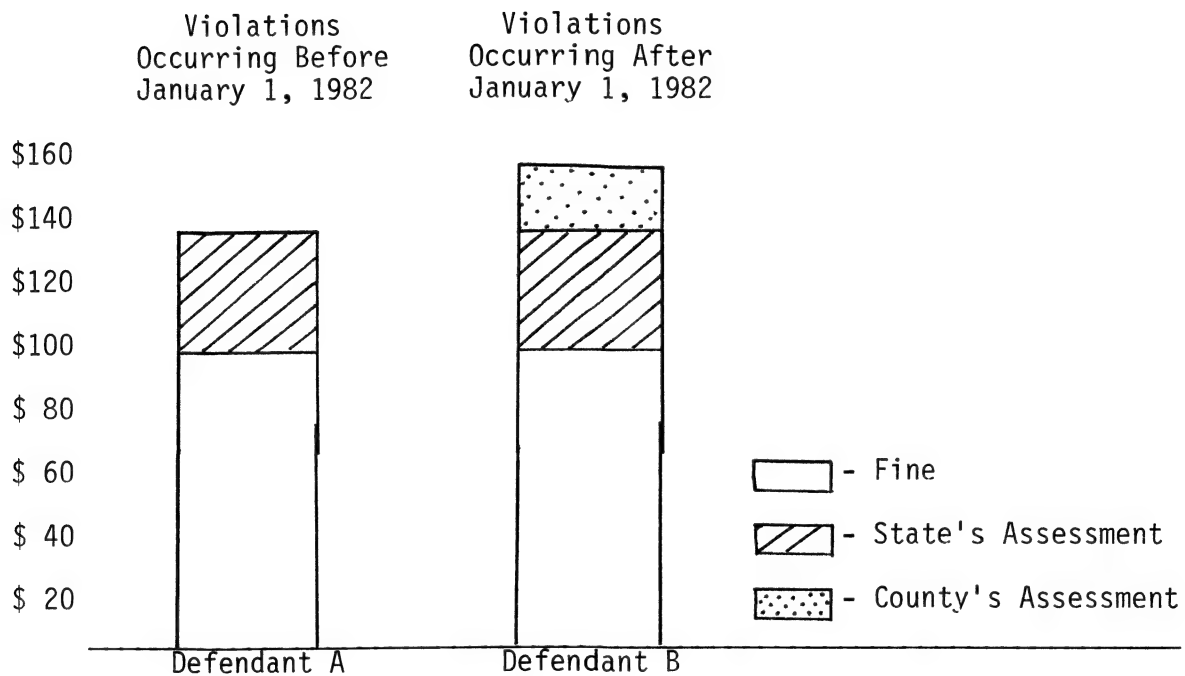
the State's assessments. Thus, Los Angeles and San Francisco Counties were authorized to collect a total assessment of \$6 for every \$10 of the fine; other counties collected \$5 for each \$10 of fine.

The specific amount of assessment to be collected, however, depended on when the violations were committed. In many cases, defendants who committed violations before January 1, 1982, did not have their cases decided until after January 1, 1982. Assessments in these cases were to be levied at the \$4 rate, all of which was to be remitted to the State. For defendants whose violations and convictions both occurred after January 1, 1982, the assessments were to be levied at the higher rate, part of which was to be retained by the counties. For example, if Defendant A in Los Angeles County was charged with reckless driving on December 16, 1981, and Defendant B was cited for a similar violation on January 3, 1982, and both were fined \$100 on January 23, 1982, Defendant A should have paid an assessment of \$40 (all to be sent to the State) because the violation occurred before January 1, 1982. Defendant B, however, should have paid an assessment of \$60 (\$40 for the State and \$20 for Los Angeles County) because that defendant's violation occurred after January 1, 1982.

The State was entitled to the entire assessment paid by Defendant A and two-thirds of the assessment paid by Defendant B. Los Angeles County, on the other hand, should have retained one-third of the assessment collected from Defendant B and none of the assessment collected from Defendant A. Table 3 on the following page illustrates

this example and for each violation shows the State's assessment and the county's assessment.

TABLE 3
EXAMPLE SHOWING COUNTY AND STATE
SHARE OF ASSESSMENTS ON CASES
DECIDED AFTER JANUARY 1, 1982
(Los Angeles County)



Only one court in Los Angeles County, the Los Angeles Municipal Court, properly accounted separately for the assessments it collected at the different rates. In January 1982, for example, the Los Angeles Municipal Court collected a total of \$656,661 in assessments. Of this amount, the court collected \$618,249 at the \$4 rate and \$38,412 at the \$6 rate. The county auditor appropriately reported to the State Controller all of the \$618,249 and two-thirds of the \$38,412 for a total due the

State of \$643,857. The county auditor properly retained \$12,804 for the county's use. The \$643,857 remitted to the State was 98 percent of all the assessments collected by the Los Angeles Municipal Court during January 1982.

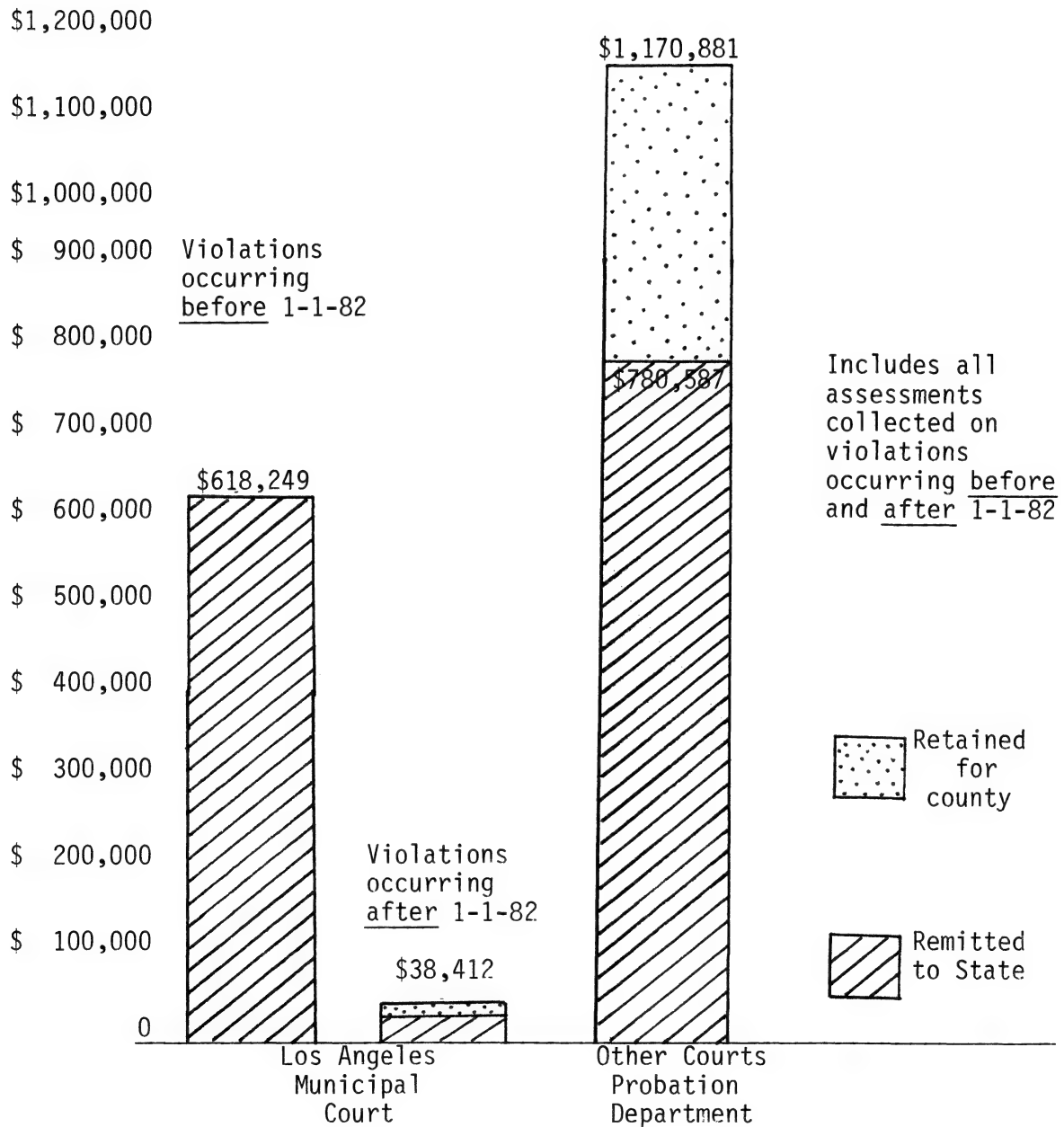
By comparison, the county auditor reported to the State Controller only 66.7 percent of the assessments reported for January 1982 by the other 23 municipal courts, the one county justice court, and the county probation departments. Unlike the Los Angeles Municipal Court, the other municipal courts in the county and the justice court did not account separately for the assessments that they collected at the different rates. Consequently, these courts and the county auditor could not precisely determine the assessments due the State and the assessments that should be retained by the county. However, the probation department and the county clerk separately accounted for the State's assessments and the county's assessments. The assessments reported by these two agencies to the county auditor included only assessments due to the State; the county's assessment was reported separately. Thus, the county was not entitled to retain any portion of the assessments reported by the probation department or the county clerk. To apportion between the State and the county the assessments reported by the courts, except Los Angeles Municipal Court, the county auditor retained one-third of all assessments reported. In January 1982, these courts and the probation department reported to the county auditor a total of \$1,170,881 of assessments; the county auditor reported to the State Controller \$780,587 (two-thirds of the assessments) and retained \$390,294. Thus, the amount retained by the

county included not only one-third of all assessments collected at the \$6 rate, but one-third of the assessments collected at the \$4 rate and one-third of the assessments reported by the probation department. All of the assessments collected at the \$4 rate and the assessments reported by the probation department should have been sent to the State.

Table 4 on the following page compares these assessments reported to the State Controller by the county auditor of Los Angeles County for January 1982.

TABLE 4

**COMPARISON OF JANUARY 1982 ASSESSMENTS
REMITTED FOR LOS ANGELES MUNICIPAL
COURT TO ASSESSMENTS REMITTED FOR
OTHER AGENCIES IN LOS ANGELES COUNTY**



The table shows the disparity between the proportion of assessments that the county auditor remitted to the State for the Los Angeles Municipal Court and the proportion remitted for the courts and the probation department.

Moreover, we also found that three municipal courts in Los Angeles County retained for the county one-third of their total assessments from January 1982 through July 1982 and reported to the county auditor only two-thirds of the assessments they collected. The county auditor in turn retained an additional one-third of the amounts reported by these three courts. Consequently, Los Angeles County was retaining more than one-half of each assessment collected by these courts.

Los Angeles County continued to retain a portion of the assessments due the State for each month after January 1982. However, after January 1982, the proportion of assessments collected at the \$4 rate substantially decreased. Consequently, the county was legally entitled to retain a larger portion of the assessments in each successive month and the amount that the county underpaid the State each month decreased correspondingly. Nonetheless, based on our tests and on information provided by the Los Angeles County Auditor-Controller's Audit Division, we estimate that from January 1982 through December 1982, Los Angeles County underpaid assessments by approximately \$1.7 million.

Los Angeles County was not the only county we reviewed that did not remit to the State correct amounts of assessments. One court in Alameda County and a court in Santa Clara County each improperly retained for county use a portion of the assessments due the State. The courts in both counties properly increased their assessment rate from \$4 to \$5; the additional \$1 assessment was for their county's use. The Alameda court increased the rate in January 1982, and the Santa Clara court increased the rate in February 1982. Moreover, the two courts properly levied the \$4 assessment rate on fines for violations committed before January 1, 1982, and levied the \$5 assessment rate on only those fines for violations committed after January 1, 1982. However, these courts made the same error as courts in Los Angeles County; they did not account separately for the collections made at the different rates.

In both the Alameda court and the Santa Clara court, all of the assessments collected at the \$4 rate and four-fifths (\$4 of \$5) of the assessments collected at the \$5 rate should have been remitted to the State. Only one-fifth of the assessments collected at the \$5 rate and none of the assessments collected at the \$4 rate should have been retained for the county's use. However, these courts inappropriately retained for their respective county's use, one-fifth of all assessments collected (including those assessments that were levied at the \$4 rate) and reported to the county auditors the remaining amount of assessments. As a result, the county auditors failed to remit all assessments that were due to the State. We estimate that these two counties owe the State approximately \$63,900 because they inappropriately retained one-fifth of all assessments collected at the \$4 rate during 1982.

In contrast to the three counties that underpaid the State, a court in Riverside County failed to retain, for the county's use, the county's share of the assessments that it collected. Riverside County reportedly overpaid the State approximately \$131,400 in assessments during the period of January 1982 through June 1983. The court's account clerk who summarizes the monthly assessment information told us that she inappropriately remitted all the assessments to the county auditor because she did not receive correct instructions pertaining to the assessments. Furthermore, the county auditor's staff, who did not detect this error, remitted the entire assessment amount to the State. This overpayment went undetected until our review because the county auditor's system for monitoring the collections and remittances of the county courts is not adequate to identify overpayments and underpayments and because no one within the court noticed the overpayment.

Assessments Collected by
the Traffic Adjudication
Board Were Not Transferred
to the State's Assessment Fund

From January 1981 through January 1984, assessments totaling over \$1.4 million collected by the Traffic Adjudication Board (TAB) were not transferred to the Assessment Fund because the State Controller did not have the statutory authority to transfer the assessments collected by the TAB to the Assessment Fund. As a result, more than \$300,000 collected by the TAB was not available for use by the victims program and approximately \$1.1 million was not available for other programs financed by the Assessment Fund.

Established as a demonstration program to process traffic infractions for Sacramento and Yolo counties, the Traffic Adjudication Board was created to relieve congested court calendars. Section 40666 of the California Vehicle Code authorized the TAB to collect fines and assessments. Each month, the TAB remitted the fines and assessments that it collected to the State Treasurer for deposit in the Traffic Adjudication Fund. At the end of each month, the TAB reported to the State Controller the amounts of fines and assessments to be disbursed to the county auditors of Sacramento and Yolo counties and to the State's Assessment Fund. However, prior to January 1981, statutes allowed the State Controller to disburse the revenue to the counties but did not authorize the State Controller to transfer the assessments from the Traffic Adjudication Fund to the Assessment Fund.

Because the statutes did not authorize the transfer, over \$1.4 million in assessments due the Assessment Fund accumulated in the Traffic Adjudication Fund during the period January 1981 and January 1984. This problem continued uncorrected for three years while the revenue provided by fines and assessments was not sufficient to fully fund the victims program. Effective January 1, 1984, the Legislature amended the California Vehicle Code to authorize the transfer; however, as of March 14, 1984, the assessments still had not been transferred to the Assessment Fund.

Counties Have Not Remitted
The Proper Amounts of
DUI Revenue to the State

Section 1463.18 of the California Penal Code, effective January 1982, requires counties to remit to the State's Indemnity Fund the first \$20 of moneys that courts collect from defendants convicted of violating Sections 23152 or 23153 of the California Vehicle Code, driving under the influence (DUI) of alcohol or drugs. Courts are required to transfer to the county treasurer monthly the first \$20 of each fine collected; the county auditor remits the money to the State. We found, however, that the counties we reviewed have both underpaid and overpaid revenue from DUI convictions. We estimate that the net overpayment of DUI revenue is at least \$231,600.

Some courts in Los Angeles and Riverside counties did not begin to report to the county auditor any DUI revenue until four to nine months after the requirement became effective. Accounting staff interviewed stated that they did not report their DUI fines during this period because they were unaware of the statute requiring them to do so. We estimate that for 1982, Los Angeles County owes the State more than \$27,200 of overdue DUI revenue and that Riverside County owes the State more than \$4,900.

Conversely, two municipal courts in Los Angeles reported to the county auditor more DUI fines than they collected. Instead of basing their calculations on the number of DUI fines they collected, these

courts multiplied the number of monthly DUI convictions by \$20 to arrive at the amount due the State. Accounting staff for one of these two courts told us that they calculated the DUI revenue in this manner because this method was easier than keeping track of the number of fines they collect. However, because not all defendants convicted of DUI are fined and those who are fined do not always pay the fine, these courts overstated the amount owed the State. Consequently, Los Angeles County overpaid DUI revenue reported by these two courts by at least \$235,900 for the period January 1982 through June 1983.

Alameda County also overpaid DUI revenue. We found that the county's central collections department improperly reported to the State the first \$20 collected on all fines that the county received in installment payments. The department should only have reported the first \$20 it collected on DUI convictions. The accounting supervisor of the central collections department stated that this error occurred because of an incorrect interpretation of the statute. As a result, we estimate that from January 1982 through June 1983, Alameda County overpaid the State at least \$27,800.

Counties Do Not Always Remit State Revenue Promptly

State law requires courts to monthly report to the county auditor revenue to be remitted to the Indemnity Fund and Assessment Fund. However, we found one county clerk that reported its assessments

quarterly, another court that did not report its DUI fines until as much as six months after the fines were paid, and two courts that did not report the first \$20 collected on DUI fines paid in installments.

Los Angeles County remits its assessments from the superior and juvenile courts to the State quarterly rather than monthly as required. The county clerk accounts for and transfers to the county auditor the assessments collected by the superior and juvenile courts. Each month the county clerk collects approximately \$45,000 of assessments from the courts. At the end of the month, the county clerk transfers assessments and other county revenue to the county auditor for deposit in the county's treasury. At the end of each quarter the county clerk summarizes the assessments that it transferred to the county treasury during the previous three months and notifies the county auditor of those assessments due the State. Accounting officials at the county clerk's office stated that the county auditor authorized this procedure to reduce the workload of the county clerk's accounting staff. However, this procedure allows Los Angeles County to use or invest state funds for up to three months. Accordingly, the State is unable to derive benefit or revenue from these funds during that period.

Other counties have also delayed remitting fines to the State. One court in Alameda County held DUI fines it collected for as long as six months for some defendants who were ordered by the court to attend a class. The court would not close the file and transfer the DUI fines to the county auditor until the defendants had completed the classes.

Consequently, the county auditor did not remit the revenue to the State until the court transferred the fines.

One court in Riverside County did not always report to the county auditor the first \$20 collected on DUI fines paid in installments. Also, one court in Los Angeles County reported the \$20 from the last payment received. Since courts did not promptly report the DUI fines, county auditors could not promptly remit the fines to the State.

Collection Problems May Exist Statewide

In 1983, the Office of Criminal Justice Planning (OCJP) examined the revenue collection procedures of court districts, county auditors, probation departments, and county collection departments in six counties. The OCJP reviewed the procedures of these agencies for calculating and remitting Indemnity and Assessment Fund revenue due the State. The OCJP identified similar problems in the counties that it reviewed as we identified in the counties we reviewed.

For example, the OCJP found that some court districts in San Diego County did not correctly calculate the assessments on DUI fines and did not report all assessments due the State. Two court districts incorrectly made deductions from some fines before calculating the assessments; as a result, the assessments were too small. Another court district in San Diego County improperly retained for its county's use one-fifth of assessments that should have been remitted in total to the

State. The OCJP estimated that San Diego County failed to remit to the State \$283,635 of assessments because of these errors.

Additionally, the OCJP found that the San Diego County agency that accounts for assessments collected by the probation department was not reporting these assessments to the State, and that the first \$20 collected for DUI convictions on probation department and juvenile traffic court cases was not being reported. County officials did not remit the assessments because they contend that they are not required to report or remit to the State court-ordered fines and assessments paid as a condition of probation. However, the juvenile traffic court did not report the first \$20 collected for DUI convictions because the court was unaware of the requirement to do so. The OCJP estimated that San Diego County failed to remit to the State Controller \$318,100 in assessments collected by the probation department, \$35,660 of DUI fines collected by the probation department, and \$3,520 of DUI fines collected by the juvenile traffic court.*

The OCJP found similar errors in Sacramento County. The county's Office of Revenue Reimbursements, which is responsible for collecting fines paid in installments, did not correctly calculate

*The Office of Criminal Justice Planning requested the Attorney General to determine if San Diego County owed to the State any DUI or assessment revenue collected by the county's probation department as a condition of probation. The Attorney General concluded in an opinion dated December 1983 that the county owed the assessment revenue to the State but did not owe any portion of fines collected as a condition of probation.

assessments. The Office of Revenue Reimbursements, like courts we reviewed, deducted certain fees from DUI fines before calculating the assessment. The OCJP estimated that Sacramento County had failed to remit \$232,319 of assessments to the State.

Because OCJP identified problems similar to those we found in our review, we conclude that these problems may exist statewide. We cannot, however, estimate the magnitude of these problems in counties we did not review.

The System for Collecting and Remitting Revenue Is Inadequate

Counties have not collected and remitted the proper amounts of fines and assessments to the State because the courts do not have adequate collection procedures and because county auditors and the State Controller are not providing adequate oversight and monitoring. Moreover, statutes do not clearly define the responsibility for administering the system for collecting and remitting the revenue.

County Auditors Are Not Adequately Monitoring Courts' Activities

Some county auditors are not adequately monitoring court collection activities and are not sufficiently reviewing revenue reports submitted to them. In our opinion, the county auditors are in the best position to identify weaknesses in courts' procedures and errors in

collections and remittances because only county auditors receive reports from each court or agency collecting the fines and assessments. However, county auditors are not adequately reviewing courts' collections before remitting the collections to the State.

Furthermore, although audit staff of the county auditors generally conduct internal audits of courts in their counties, these audits have not been adequate to ensure that the courts comply with the statutes requiring them to calculate and remit to the county auditor the proper amount of state revenue.

State Controller Has Not Always
Provided Timely Direction

The State Controller is required by statute to provide a uniform system of accounting for municipal and justice courts. Although the State Controller has established an accounting manual, the State Controller has not always promptly updated the manual to reflect changes in the statutes. For example, when the legislation was enacted requiring courts to remit to the State the first \$20 of each DUI fine collected, the State Controller did not notify the courts of the changes until April 1982, four months after the new statute went into effect. In addition, the State Controller did not revise its accounting manual to reflect these changes until four and one-half months after the statute became effective. This point is particularly important because, as we pointed out earlier in the report, accounting staff at several of the courts were

not aware of certain collection requirements and, therefore, had not developed adequate procedures to properly account for and remit revenues to the county auditor.

Furthermore, the State Controller's accounting manual does not clearly specify how courts should handle fines and assessments paid in installments. The manual recommends, but does not require, that courts report assessments due the State from the first payment made by a defendant. Furthermore, there is no statutory requirement that governs the distribution of installment payments. Consequently, because following the manual's recommendation would result in the counties' not collecting part of their revenue when defendants fail to pay the entire fine, several courts have chosen to collect and distribute their counties' revenue from the first payment. When courts first collect and distribute the county's portion of the revenue, the State may not receive a part or all of its share of fines and assessments when defendants fail to pay the entire amount ordered by the court. However, if the State Controller's accounting manual were to require counties to prorate payments made in installments, the State and the counties would be treated equally when a defendant fails to pay all of the fine and assessment.

Post Audits Have
Not Been Effective

The State Controller is responsible for ensuring that all State revenue collected by the courts is properly remitted to the State and for establishing a system of audits of the municipal and justice courts. However, the State Controller has performed little direct review or monitoring of court collection activities. In 1983, the State Controller authorized the Office of Criminal Justice Planning to review court procedures for collecting and remitting fines and assessments to the State. As we have noted, the OCJP reviewed court districts in six counties and identified problems similar to those we found during our subsequent review. The OCJP has discontinued its reviews.

In addition to the limited reviews performed by the State Controller and the OCJP, Section 71383 of the California Government Code requires that municipal and justice courts be audited at least once every two years. In the event that any municipal or justice court is not audited at least once every two years, the statute allows the State Controller to audit the court. The State Controller's Local Government Fiscal Affairs Division is responsible for ensuring that municipal and justice courts are audited at least biennially, and for providing to the courts audit guidelines for the performance of these audits.

The State Controller has provided guidelines that require county auditors or independent auditors to review the courts' activities for compliance with the statutes and for proper distribution of revenue

due to the State. However, the audits by the county auditors in the counties we reviewed have been insufficient and inadequate to ensure that courts are properly calculating, collecting, and reporting fines and assessments due to the State. For example, 20 courts in Los Angeles County have been audited only once since 1977 and 7 have not been audited since 1980. In addition, the audit reports do not disclose deficiencies in the courts' compliance with statutes requiring them to properly collect and remit fines and assessments to the State. For example, although the State Controller has received audit reports for most courts in Alameda County through June 30, 1981, the audits do not provide sufficient information to enable the State Controller to determine if money is due the State and if the courts are complying with requirements for collecting and reporting fines and assessments due the State. The State Controller has not monitored the audits received to ensure that the audit reports are adequate.

Administrative Responsibilities
Are Not Clearly Defined

The legislation establishing the victims program does not clearly define the responsibility for administering the system for collecting revenue that supports the victims program. Although the responsibility for monitoring the system logically rests with the county auditors and the State Controller, the statutory authority for the State Controller and the county auditors to monitor collections and remittances by the courts is limited.

The State Controller is responsible for ensuring that all money due the State is received and for establishing a uniform accounting system for municipal and justice courts. However, the State Controller has no statutory authority to monitor municipal and justice court collection activities. The State Controller is similarly without authority to review or monitor fines and assessments collected by the superior and juvenile courts or the county probation departments. Furthermore, the statutes do not provide the State Controller authority to prescribe a system of accounting or prescribe audit standards for superior courts, juvenile courts, probation departments, or county collection departments.

Because the State Controller is not required by statute to provide its accounting manual to other county agencies that collect fines and assessments, the State Controller does not send them the copies of its manual, updates to the manual, or other information related to collecting fines and assessments. Furthermore, the State Controller has not been directed to establish regulations for administering the system for collecting fines and assessments and providing technical assistance to courts and county auditors.

In addition, legislation that established the victims program does not clearly define the responsibilities of county auditors for collecting revenue from the courts. The county auditors generally receive the collections from the courts and remit the total collections to the State in one monthly payment. However, the county auditors have

not been directed by statute or by the State Controller to monitor the courts' system for collecting fines and assessments.

Although responsibilities of the State Controller and the county auditors are not clearly defined, the responsibilities of the courts are clear. The courts must comply with the statutes requiring them to properly levy, collect, and report fines and assessments to the county auditor for transfer to the State. As we have reported, however, many of the courts were not complying with these requirements. Procedures used by these courts are not adequate to ensure that the courts properly collect and account for revenue due the State. Because of these procedural deficiencies at the courts, the courts are inaccurately calculating assessments and reporting inaccurate amounts to the county auditors.

CONCLUSION

Courts and county auditors in four California counties have failed to collect and remit the proper amount of revenue due the State. We estimate that from July 1981 through June 1983, the total underpayments in the counties we reviewed were more than \$1.9 million and the total overpayments were approximately \$412,000. The resulting net underpayment to the State was more than \$1.5 million. An additional \$1.4 million collected by the Traffic Adjudication Board has not been transferred to the State's Assessment Fund. Further, the system for collecting

and remitting state revenue is inadequate and the statutes do not clearly define the responsibility for administering the system. As a result, county auditors are not adequately monitoring court collection activities and the State Controller does not have clear authority to review and monitor the activities of all the courts, probation departments, and county collection agencies that are responsible for collecting and remitting the fines and assessments that support the victims program.

RECOMMENDATIONS

To ensure that courts collect and report all the revenue for the Victims of Crime Program, we recommend that the State Controller take the following actions:

- Revise the accounting manual to direct the courts to establish procedures to accurately calculate, collect, and properly account for assessments. These directions should require that the courts prorate state and county portions of fines and assessments partially paid or paid in installments;
- Maintain the accounting manual with timely, accurate updates to reflect changes in the statutes; and

- Monitor the counties to ensure that biennial audits required for each of the municipal and justice courts are performed promptly and review the audit reports to ensure that the courts are properly levying, collecting, and reporting fines and assessments due the State.

To provide authority to the State Controller and direction to the county auditors necessary to adequately monitor the collection of fines and assessments due the State, the Legislature should take the following actions:

- Authorize and direct the State Controller to monitor and audit the collection activities of all courts and county offices that collect and remit revenues that fund the victims program. The scope of this authority should include superior courts and juvenile courts, county probation departments, and all other agencies that collect revenue due the State;
- Direct the county auditors to review and monitor the collection activities of the courts, probation departments, collection departments, and county clerks to ensure that fines are accurately identified, that assessments are accurately calculated, and that the revenue is promptly remitted to the State; and

- Direct the State Controller to determine the correct amounts of fines and assessments due from the counties and collect the unpaid amount.

II

FINES AND ASSESSMENTS HAVE NOT BEEN ADEQUATE TO FUND THE VICTIMS PROGRAM

Although the Legislature has enacted several statutes designed to increase the amount of money available to compensate victims of crime, the revenue collected has not been sufficient to fully fund the Victims of Crime Program. Several factors account for this deficiency. First, fines may not be collected on many DUI convictions; second, because of conflicting sections of the California Penal Code, DUI fines collected by probation departments and juvenile courts may not have to be remitted to the State; and third, judges seldom impose fines on defendants convicted of violent crimes.

Revenue Has Not Been Sufficient To Fund the Victims Program

The fines and assessments collected to support the victims program have not been sufficient to fully finance the program. For example, although the fiscal year 1980-81 budget of the victims program provided \$6.4 million to pay claims, the total budget was committed by March 1981. As a result, over 1,000 claims totaling approximately \$2.7 million were held over for payment in fiscal year 1981-82.

In fiscal year 1981-82, the program again committed all its funds before the end of the fiscal year and held over until the next year claims totaling \$1.9 million. Again in fiscal year 1982-83, the program did not have enough money to pay all claims; therefore, the Legislature approved the transfer of penalty assessment revenue due the Peace Officers' Training Fund to the Indemnity Fund to pay \$4 million in claims.

Not All Defendants
Convicted of DUI Pay Fines

Based on a 1983 study conducted by the State Controller, violations of Section 23152 of the California Vehicle Code, driving under the influence of alcohol or drugs, account for the majority of fines and assessments that are remitted to the State. In 1983, the minimum DUI fine was \$390, requiring an additional assessment of \$156 (\$4 for each \$10 of fine) due to the State. In comparison, most violations of other Vehicle Codes result in fines of less than \$75 and a proportionately smaller amount of assessment.

The courts, however, do not always fine defendants who are convicted of DUI, and not all defendants who are fined pay their fines. Thus, fines and assessments collected for DUI violations are substantially less than would be expected based on the number of DUI convictions. For example, in 3 court districts in Los Angeles County, we reviewed 156 DUI cases from January 1982 through September 1983, and found that 127 (81.4 percent) of the defendants were convicted. Of the

remaining 29 defendants, 26 had their charges reduced to a lesser charge, usually reckless driving, and 3 defendants had their charges dismissed.

Of the 127 defendants convicted of DUI violations, 115 (90.5 percent) were fined. Fifteen of these defendants served time in jail without paying the fine; another 24 failed to appear in court or pay a fine. The court issued bench warrants for their arrest. Eleven of the defendants chose to perform community service work in lieu of paying the fine, and the remaining 20 defendants were either granted probation or their cases are still pending; none of these 20 have paid a fine. Only 57 (44.9 percent) of the 127 defendants convicted of driving under the influence of alcohol or drugs paid all or a portion of their fine or assessment.

Probation Departments and
Juvenile Courts May Be
Exempt from Remitting DUI
Fine Revenue to the State

Statutes applying to the county probation departments and juvenile courts do not clearly require these agencies to pay \$20 to the State for each DUI fine they collect. In three counties we visited, the probation department paid a portion of each DUI fine to the State; however, the probation department in the fourth county did not. None of the counties was remitting DUI fines collected by juvenile courts.

Probation Departments

During fiscal year 1982-83, for example, Los Angeles County and Alameda County remitted \$46,214 and \$30,887, respectively, in DUI revenue collected by their county's probation departments. Although we do not know the exact amount, during fiscal year 1982-83, Santa Clara County remitted at least \$31,624 in DUI revenue collected by its county probation department. Riverside County, on the other hand, did not remit to the State any of the DUI fines collected by its probation department. The Office of Criminal Justice Planning, in its review of San Diego County, concluded that San Diego County had underpaid the State \$125,206, because the county had not remitted the first \$20 of DUI fines collected by the probation department.

Although Los Angeles County had remitted to the State some DUI fines collected by its probation department, staff of the Los Angeles County Auditor-Controller's Office told us that the county was not required to remit any portion of a fine collected by its probation department when the fine was ordered as a condition of probation. They contend that provisions of California Penal Code Section 1203.1 exempt the probation department from paying these fines to the State. Section 1203.1 requires that any fine ordered paid as a condition of probation and collected by the county probation department be deposited in the county's general fund for use by the county. However, apparently in conflict with that code section is Section 1463.18 of the Penal Code, which requires the first \$20 of any moneys collected for a conviction of

driving under the influence of alcohol or drugs to be remitted to the State for deposit in the Indemnity Fund and that these fines be used to compensate victims of crime with preference given to victims of alcohol-related traffic offenses.

To resolve this apparent statutory conflict, we requested an opinion from the Legislative Counsel. The Legislative Counsel concluded that Section 1203.1 of the Penal Code precludes the transfer to the Indemnity Fund, pursuant to Section 1463.18 of the Penal Code, of the first \$20 of any moneys collected by a probation department as a condition of probation. The Legislative Counsel observed, however, that if a court has only to place a defendant on probation to prevent the transfer of funds to the State, the court could use Section 1203.1 to justify retaining all of its DUI fines. One thing is clear, however: this apparent conflict in the statutes has reduced the State's revenue from DUI fines.

Recent legislation may be affected by a similar statutory conflict. The Legislature added Section 13967.5 of the California Government Code, effective January 1, 1984, which provides for a restitution fine that may be collected by a probation officer. However, if this statute is interpreted in the same manner as sections of the Penal Code mentioned above, county probation departments may be permitted to deposit in the county's general fund any restitution fine that they collect.

Juvenile Courts

Although juvenile courts do hear DUI cases, none of the four counties that we visited had remitted to the State DUI revenue collected in juvenile court cases. For example, the Los Angeles County juvenile court hears approximately 750 DUI cases each year, and we estimate that the Santa Clara County juvenile court hears approximately 190 DUI cases annually. Neither county had remitted to the State DUI revenue collected in its juvenile court. Officials we interviewed stated that they were unaware of Section 1463.18 of the Penal Code and the requirement to report DUI revenue to the State. The court referees in two courts, however, stated that they did not believe that Penal Code Section 1463.18 applies to juvenile cases. Because the statutes that apply to juvenile courts do not clearly require juvenile courts to report this revenue, we did not estimate the amount of DUI revenue that might be due the State for fines collected on juvenile cases in these four counties.

Juvenile courts, like probation departments, may not be required to report DUI fine revenue to the State. Section 1463.18 of the Penal Code applies only to DUI fines that must be deposited with the county treasurer pursuant to Section 1463 of the Penal Code. Section 1463 of the Penal Code, however, applies only to fines and forfeitures collected in the municipal and justice courts. Since juvenile courts are under the jurisdiction of the superior court, juvenile courts may not be required to remit DUI revenue to the State.

Judges Seldom Fine
Defendants Convicted
of Violent Crimes

Fines for crimes of violence, authorized by Section 13967 of the California Government Code, have generated very little revenue because judges seldom impose these fines. Prior to January 1, 1984, Section 13967 of the Government Code required judges to impose a fine of from \$10 to \$10,000 on a defendant convicted of a violent crime that resulted in injury or death of another person. This fine was to be in addition to any other fine, provided that the additional fine did not cause the defendant's family to be placed on public assistance. However, judges in the municipal and superior courts have seldom imposed this additional fine.

Judges provided a number of reasons for not levying the additional fine. The presiding judge of a municipal court in Los Angeles County, for example, explained that he had never imposed a fine under Section 13967 because the persons convicted of violent crimes or crimes, in general, are usually indigent and unable to pay the fine. In addition, he felt that judges are more inclined "to sentence the defendant to serve time and get them off the streets rather than to impose a fine."

Another municipal court judge we interviewed told us that he would have to conduct a hearing to consider the impact of any additional fines on the defendant's family before he could impose such a fine. The

judge added that scheduling additional hearings would be difficult because court calendars are already overcrowded. This judge also stated that persons who commit violent crimes are more likely to be sent to prison than fined.

The presiding judge of a municipal court district in Riverside County felt that fines under Section 13967 of the Government Code should be imposed in all cases if the court determines that the defendant has the ability to pay the fine. He agreed with the other county judge that to determine the defendant's ability to pay an additional fine would require a hearing.

CONCLUSION

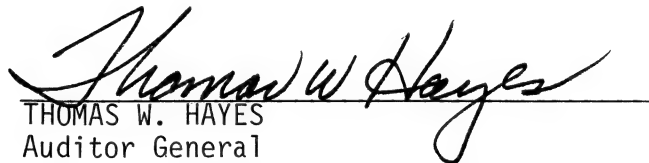
The amount of fines and assessments collected by the courts has not been sufficient to fully fund the victims program. The deficiency has resulted because many convictions for driving under the influence of alcohol or drugs do not result in fines, because defendants who are fined do not or cannot always pay the fine, and because statutes may not require that fines collected by probation departments and juvenile courts be remitted to the State. In addition, courts seldom impose or collect fines from defendants convicted of violent crimes.

RECOMMENDATION

The Legislature should review Sections 1203.1 and 1463.18 of the California Penal Code and remove the apparent conflict between these two code sections. The Legislature should also clarify Section 13967.5 of the California Government Code to ensure that it does not conflict with Section 1203.1 of the California Penal Code.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: April 2, 1984

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KENNETH CORY

Controller of the State of California

SACRAMENTO, CALIFORNIA 95805

March 27, 1984

Thomas W. Hayes
Auditor General
660 'J' Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Your report entitled "Courts and Counties Are Not Collecting and Remitting to the State All Revenue for the Victims of Crime Program" has been received and reviewed by this office. This reply has been prepared following an exit interview held with members of your staff on March 21, 1984.

As you are aware the State Controller's Office has been concerned for sometime with the activities of Municipal and Justice Courts. Your report addresses areas of concern that are shared by this office. The report supports the concerns of this office and reinforces the efforts we have taken to correct weaknesses and possible future problems within the municipal and justice court system.

Due to budgetary constraints we have delegated to counties the responsibility for overseeing the municipal and justice courts. We have relied upon the independent audits of these courts to indicate possible weaknesses within the court system.

It was determined in conjunction with the Office of Criminal Justice Planning that these audits were not reflecting inconsistencies in collection and remittance procedures of these courts. Therefore, in January of 1983 and at their request we granted the Office of Criminal Justice Planning the temporary authority to audit Victim of Crime programs. Effective July 1, 1984 we have been provided resources through the Budget Change Proposal process which will enable us to establish a court audit program.

The report expresses concern regarding the responsibilities of the State Controller relating to court collection, remittance and monitoring procedures. We would like to respond to these comments and the recommendations contained in the report.

- (1) Issue: Assessments collected by the Traffic Adjudication Board was not transferred to the State's Assessment Fund, (page 22 of report).

Response: The State Controller's Office is not only aware of the legislation authorizing the transfers but was instrumental in seeking legislation to remedy the problem cited in the report. Unfortunately, this legislation was vague and unclear, and did not contain the specific language allowing the office to transfer the existing balances within the Traffic Adjudication Fund. An administrative decision was made which transferred existing balances in the same manner as court collected penalty assessments are transferred under Penal Code Section 1464. The transfer was made March 23, 1984.

It is our understanding that your staff is in agreement with the manner in which we have decided to dispose of the funds.

- (2) Issue: The system for collecting and remitting revenue is inadequate, (page 29 of report).

Response: Collection and remittance procedures are established by law. The remittance of revenues from courts will be audited by this office commencing July 1, 1984 and will be continued until completed.

- (3) Issue: The State Controller has not always provided timely direction, (page 30 of report).

Response: The State Controller makes every effort to notify local agencies of changes in the law in a timely manner, particularly those changes affecting county auditors and municipal and justice courts. The Controller notifies counties of legislative changes in several ways. Annually the Controller meets with county auditors in the month of October, specifically to disseminate newly enacted legislation of mutual interest. We regularly notify municipal and justice courts and county auditors of necessary changes and communicate with their respective associations as well.

- (4) Issue: The State Controller's accounting manual does not clearly specify how courts should handle fines and assessments paid in installments (page 31 of report).

Response: The accounting manual does recommend a procedure for collecting installment payments. The procedure requires courts to remit moneys due the State from the first payment received. This policy is consistent with Penal Code Section 1463.18 which states in part, "The first twenty dollars (\$20) of any amount collected for a conviction shall be transferred to the Indemnity Fund ..."

- (5) Issue: Post audits have not been effective, (page 31 of report).

Response: Audits of courts is an area of concern of the State Controller's Office. As indicated earlier we have determined that audits have not indicated problems that exist within the court system. The additional funding received by this office through a Budget Change Proposal will allow for the State Controller's court audit program to begin July 1, 1984. The additional funds will not only be used to audit courts but also monitor the independent audits. In this way the State Controller will be in a better position to ensure effective and reliable audits of courts.

We concur with your recommendations found on page 36 of the report. The State Controller has already taken the actions to ensure courts collect and report all revenues for the Victims of Crime Program as well as all other revenue due the State. The following are the actions we have already instituted.

Recommendation:

Revise the accounting manual to direct the courts to establish procedures to accurately calculate, collect, and properly account for assessments. These directions should require the courts prorate state and county portions of fines and assessments partially paid or paid in installments.

Action:

An ad hoc committee was established in December of 1983 to review and completely revise the court accounting manual and court audit guidelines. The committee is represented by municipal finance officers, municipal court clerks, county clerks, county audit chiefs, county accounting chiefs, county revenue and reimbursement officers, the State Office of Criminal Justice Planning and representatives of the State Controller's Office. This committee has met once in both January and February of 1984. Installment collections is one of many issues that will be considered in the revision of the accounting manual.

Recommendation:

Maintain the accounting manual with timely, accurate updates to reflect changes in the statutes.

Action:

We have a legislative coordinator who is tracking legislation for courts. All pertinent enacted legislation will be summarized and provided to municipal and justice courts as well as county auditors prior to January of each year. This has been a longstanding practice with county auditors and a newly implemented program for courts. As changes to the manual are required they will be made and distributed shortly after legislative enactment.

Recommendation:

Monitor the counties to ensure that biennial audits required for each of the municipal and justice courts are performed promptly and review the audit reports to ensure that the courts are properly levying, collecting, and reporting fines and assessments due the State.

Action:

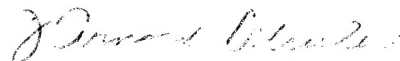
Monitoring the receipt of biennial audits of courts, by this office is being administered at this time. Audit reports are logged and reviewed. County Auditors are notified of all outstanding court audits.

We will now be able to be more effective in monitoring and ensuring prompt and meaningful audits with the additional funding provided this office.

If you wish to discuss this response please contact Mr. John Korach of my staff at 322-5615.

Cordially,

KENNETH CORY, STATE CONTROLLER



By

F. Arnold Schuler
Deputy State Controller

FAS/ob

2867F

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps